

Before the  
Administrative Hearing Commission  
State of Missouri



DEPARTMENT OF HEALTH AND SENIOR )  
SERVICES, )

Petitioner, )

vs. )

ADAM CORTNER, )

Respondent. )

No. 14-0166 DH

**DECISION**

Adam Cortner is subject to discipline because he pled guilty to crimes reasonably related to his profession and crimes involving moral turpitude.

**Procedure**

On February 3, 2014, the Department of Health and Senior Services (“the Department”) filed a complaint seeking to discipline Cortner. On March 26, 2014, Cortner was personally served with a copy of the complaint and our notice of complaint/notice of hearing. On April 21, 2014, Cortner filed an answer.<sup>1</sup> On July 23, 2014, we held a hearing. Brenda K. Rackers represented the Department. Cortner represented himself. The matter became ready for our decision on October 17, 2014, the date the last written argument was due.

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<sup>1</sup> Cortner sent his answer to the Department, who faxed it to us. We received it on April 21, 2014.

Commissioner Sreenivasa Rao Dandamudi, having read the full record including all the evidence, renders the decision.<sup>2</sup>

### **Findings of Fact**

1. Cortner was licensed by the Department as an Emergency Medical Technician-Basic (hereinafter “EMT-Basic”) at all relevant times. This license was originally issued on February 16, 2011.

#### Operating a Motor Vehicle in a Careless and Imprudent Manner

2. On July 18, 2009, Detective Auston Ray Clark pulled Cortner over in a traffic stop on State Route F in Ste. Genevieve County. Cortner’s vehicle was traveling east towards Clark’s vehicle and was partially in Clark’s lane of traffic. Clark observed Cortner’s speech to be slurred, he smelled of alcohol, and his eyes were watery and glassy looking. Cortner first denied, but then admitted to, drinking alcohol. Cortner consented to perform several field sobriety tests at Clark’s request. Cortner failed the horizontal gaze nystagmus test<sup>3</sup> because he had lack of smooth pursuit. Cortner failed the one-leg stand test because he placed his foot down and swayed and used his arms for balancing. Cortner failed the walk-and-turn test because he stepped out of position while Clark was demonstrating the test to him. Cortner also did not touch heel to toe on any of the steps, and he used his arms for balancing.

3. Clark arrested Cortner and charged him with driving while intoxicated. Cortner refused to perform a breath test.

4. On July 18, 2009, Cortner was given a uniform citation for driving while intoxicated.

5. On January 27, 2010, in the Circuit Court of Ste. Genevieve County, Cortner entered a plea of guilty to the amended charge of operating a motor vehicle in a careless and imprudent

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<sup>2</sup> Section 536.080.2, RSMo 2000; *Angelos v. State Bd. of Regis’n for the Healing Arts*, 90 S.W.3d 189 (Mo. App., S.D. 2002). Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

<sup>3</sup> This test checks for the “involuntary jerking of the eyes caused by the inner ear fluid caused by alcohol.” Tr. at 14.

manner, a Class B misdemeanor. Cortner received a suspended imposition of sentence with two years of unsupervised probation.

6. Prior to the Department licensing Cortner, through a criminal background check that was conducted on Cortner, it was made aware of this guilty plea.

#### First DWI

7. On April 24, 2011, at approximately 8:00 a.m., police officer Justin Jones, with the St. Louis County Police Department, was in the parking lot of the Quik Trip gas station on Lindbergh Boulevard. Jones was approached by a patron who reported there was a man passed out and slumped over the wheel of his vehicle and it appeared the vehicle was in drive or reverse. Officer Jones proceeded to locate the vehicle in the Quik Trip parking lot. Jones first attempted to arouse the man by knocking on the window to see if he was okay.

8. At first the man did not respond, but after Jones knocked and spoke louder, the man became aware of Jones. Jones asked the man to place the vehicle in park because it was still in reverse and turn his vehicle off. Jones asked for identification, and the man's identification indicated he was Adam Cortner. Jones smelled an odor of alcohol coming from Cortner. Jones then asked Cortner to get out of the vehicle and asked if he had been drinking. Cortner responded that he had not been drinking. While standing outside the vehicle, Cortner appeared to be confused, swaying as he stood. His eyes were bloodshot and glassy, and his shirt was soiled from food. Cortner responded to Jones in a very slow manner and his speech was slurred. Cortner refused all field sobriety tests. He refused to perform a breath analysis test and signed a form indicating his refusal.

9. Jones arrested Cortner and took him to the Brentwood Police Department. Cortner asked for his cell phone to call a lawyer. Jones refused, but provided him with a telephone book

and access to a telephone. After twenty minutes passed, Cortner refused to take the breath analysis test.

10. Cortner was issued a uniform traffic citation for operating a motor vehicle while in an intoxicated condition.

11. On April 22, 2013, in the Circuit Court of St. Louis County (“the Court”), Cortner entered a plea of guilty to the charge of DWI-alcohol, a Class B misdemeanor. Cortner was given a suspended execution of sentence and was placed on two years of supervised probation. He was ordered to complete the SATOP (Substance Abuse Traffic Offender Program) within six months, attend a victims’ impact panel within six months, perform 80 hours of community service within six months, serve 45 days of shock time, and surrender on electronic home device. The court ordered Cortner not to drink and drive, to have an ignition interlock device installed on/before one year, and to pay court costs and fees.

#### Second DWI

12. On May 22, 2011, Chesterfield police officer David Cerna responded to the area of westbound Interstate 64 at Chesterfield Parkway West for a report of a slumped driver.

13. Cerna approached the vehicle and observed Cortner slumped behind the wheel with his foot on the brake and the vehicle in park. After several attempts, Cerna woke Cortner and asked him if he was okay. While speaking to Cortner from the passenger side of Cortner’s vehicle, Cerna could smell a strong odor of alcohol “emitting from his breath.”<sup>4</sup>

14. Cortner provided Cerna with a Missouri Non-Drivers license. Cerna asked Cortner where he was coming from and Cortner stated his work. When asked where Cortner was going, Cortner responded home, which was Ambs Road in South St. Louis County Missouri. Cortner’s speech was slurred and barely comprehensible. Cerna observed Cortner lose his balance while

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<sup>4</sup> Petitioner’s ex. 7 at 4.

exiting his vehicle and walking to the shoulder of the interstate. Cerna also observed Cortner swaying from side to side. Cortner refused to participate in two of the standardized field sobriety tests when he couldn't even start the tests. Cortner was placed in handcuffs and transported to the police station.

15. Upon arrival at the police station, Cortner was asked again to perform standardized field sobriety tests and Cortner was still unable to perform two of the tests. Cerna asked Cortner to recite only the letters in the alphabet from F as in Frank to P as in Paul noting to start on F and stop on P. Cortner recited "F, G, H, I, J, K, L, M, N, O, P, Q, R, S, H, I."<sup>5</sup> Cerna then asked Cortner to count backwards from the number 57 to the number 42. Cortner recited "57, 56, 55, 54, 53, 52, 51, 50, 50, 49, 48, 47, 46, 45, 44, 43, 42, 41, 40, 39."<sup>6</sup> Cortner refused to give a sample of his breath and he was subsequently arrested for driving while intoxicated, obstructing the flow of traffic, and failing to produce a valid driver's license.

16. On April 18, 2013, an Amended Information was filed against Cortner in the Court stating:

Count: 01 Driving While Intoxicated – Class B Misdemeanor  
That Adam Cortner, in violation of Section 577.010, RSMo,  
committed the class B misdemeanor of driving while intoxicated,  
punishable upon conviction under Sections 558.011 and 560.016,  
RSMo, in that on or about May 22, 2011, on I-64 West and  
Chesterfield Parkway West, in the County of St. Louis, State of  
Missouri, the defendant operated a motor vehicle while under the  
influence of alcohol.[<sup>7</sup>]

17. On April 22, 2013, in the Court, Cortner entered a plea of guilty to the charge of DWI-Alcohol, a class B misdemeanor in addition to pleading guilty to the first DWI. Cortner was sentenced as described above.

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<sup>5</sup> Petitioner's ex. 7 at 5.

<sup>6</sup> *Id.*

<sup>7</sup> Petitioner's ex. 8 at 9.

### False Bomb Report

18. On June 18, 2013, at 1:32 p.m., a call was placed to the St. Louis County Police Communication Center. A male voice whispered that there was a bomb in the warehouse of Kerry Industries, Incorporated (“Kerry”) and that the bomb would go off in 1 ½ hours. Then the line was disconnected. Kerry is a food manufacturing facility. The Kerry plant was evacuated and a search for the bomb was conducted. There was a loss of approximately \$100,000 due to lost productivity as a result of the plant evacuation.

19. The bomb threat was made from the phone number that was eventually found to be the general number for Kerry – where all calls coming into and out of the facility are routed. The bomb threat actually came from the phone number for the phone in the north plant employee cafeteria that Kerry’s employees could use. Detective Robert Keithley, with the St. Louis County Bomb and Arson Unit, was assigned the case. Keithley obtained a call log and determined that prior to the call made at 1:32 p.m., there were a total of eight calls that had been made between 7:47 a.m. and 1:31 p.m. Seven of the calls were made to the phone number 314-437-6282, including one call that was made one minute prior to the threat. Exactly one minute after the bomb threat was called in, at 1:33 p.m., there was another phone call placed to phone number 314-892-6866. This number was later determined to belong to Cortner’s parents.

20. At the time of the investigation, Cortner was a temporary employee of Kerry and was in the process of being considered for a full-time position.

21. On June 19, 2013, Cortner denied making the bomb threat.

22. On June 20, 2013, Cortner admitted he made the bomb threat because he was not feeling well that day. Because Cortner was in the process of being considered for full-time employment with Kerry, he did not want to have an attendance mark against him for that day and he decided to call in a bomb threat in order to go home early.

23. On October 9, 2013, an Indictment was filed against Cortner in the Court stating :

The Grand Jurors of the County of St. Louis, State of Missouri,  
charge:

**COUNT: 01 MAKING A FALSE BOMB REPORT-CLASS D  
FELONY**

That Adam Cortner, in violation of Section 575.090, RSMo, committed the class D felony of false bomb report, punishable upon conviction under Sections 558.011 and 560.011, RSMo, in that on or about June 18, 2013, in the County of St. Louis, State of Missouri, the defendant knowingly made a false report or caused a false report to be made to Public Safety Dispatcher Joshua Plew that a bomb had been placed in a private place at Kerry Industries at 8155 New Hampshire Ave.[<sup>8</sup>]

24. On December 5, 2013, Cortner entered a plea of guilty to the charge of making a false bomb report, a Class D felony. Cortner received a suspended imposition of sentence with five years of supervised probation. Cortner was ordered by the Court to maintain a job, perform 120 hours of community service within one year, have no contact with Kerry, and receive drug and alcohol evaluation and treatment. Cortner was also ordered by the Court to pay court costs and fees.

**Conclusions of Law**

We have jurisdiction to hear this complaint.<sup>9</sup> The Department bears the burden of proving that Cortner's license is subject to discipline by a preponderance of the evidence.<sup>10</sup> A preponderance of the evidence is evidence showing, as a whole, that "the fact to be proved [is] more probable than not."<sup>11</sup>

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<sup>8</sup> Petitioner's ex. 6 at 10.

<sup>9</sup> Section 621.045.

<sup>10</sup> See *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-30 (Mo. App., W.D. 2012) (dental licensing board demonstrates "cause" to discipline by showing preponderance of evidence).

<sup>11</sup> *Id.* at 230.

Section 190.165.2 provides that the license of an EMT may be disciplined for the following:

The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate, permit or license required by sections 190.100 to 190.245, or any person who has failed to renew or has surrendered his or her certificate, permit or license for failure to comply with the provisions of sections 190.100 to 190.245 or any lawful regulations promulgated by the department to implement such sections. Those regulations shall be limited to the following:

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(2) Being finally adjudicated and found guilty, or having entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any activity licensed or regulated pursuant to sections 190.100 to 190.245, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

The Department promulgated 19 CSR 30-40.365, which provides:

(2) The department may cause a complaint to be filed with the Administrative Hearing Commission as provided by Chapter 621, RSMo, against any holder of any certificate, permit or license required by the comprehensive emergency medical services systems act or any person who has failed to renew or has surrendered his or her certificate, permit or license for failure to comply with the provisions of the comprehensive emergency medical services systems act or for any of the following reasons:

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(B) Being finally adjudicated and found guilty, or having entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any activity licensed or regulated pursuant to the comprehensive emergency medical services systems act, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]



The Department argues § 190.165.2(2) and 19 CSR 30-40.365(2)(B) provide the Department with cause to take disciplinary action against Cortner's license because he pled guilty to two DWI-alcohol criminal offenses, operating a motor vehicle in a careless and imprudent manner, and making a false bomb report. The Department argues that these criminal offenses are reasonably related to the qualifications, functions or duties of an EMT-B, and are crimes involving moral turpitude.

DWI-alcohol is a criminal offense defined in § 577.010:

1. A person commits the crime of "driving while intoxicated" if he operates a motor vehicle while in an intoxicated or drugged condition.

Making a false bomb report is a criminal offense defined in § 575.090:<sup>12</sup>

1. A person commits the crime of making a false bomb report if he knowingly makes a false report or causes a false report to be made to any person that a bomb or other explosive has been placed in any public or private place or vehicle.
2. Making a false bomb report is a class D felony.

### I. Reasonably Related

Reasonable relation is a low threshold. To relate is to have a logical connection.<sup>13</sup>

#### A. DWI Criminal Offenses

The Department presented testimony that Cortner's pleas of guilty to two charges of driving while intoxicated are reasonably related to the qualifications, functions or duties of an EMT-B because an EMT-B is responsible for driving the ambulance to pick up and then transport the critically ill and injured patients safely to medical facilities. Therefore, the EMT-B must be sober and able to observe traffic ordinances and regulations in driving the ambulance to

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<sup>12</sup> RSMo 2000.

<sup>13</sup> MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1050 (11<sup>th</sup> ed. 2004).

keep both the patients and his/her fellow co-workers safe. Cortner has had two DWI-alcohol arrests and entered pleas of guilty to these two cases on April 22, 2013 – after the date he received his EMT-B license on February 16, 2011.

Cortner was also charged with a DWI in 2009, but this charge was later amended to a charge of operating a motor vehicle in a careless and imprudent manner. These two DWI-alcohol pleas of guilty and the plea of guilty to operating a motor vehicle in a careless and imprudent manner have all been within the last five years. Cortner has made extremely poor choices to drink and drive during these last five years that have placed him and others at risk on the roadways.

There is cause for discipline under § 190.165.2(2) and 19 CSR 30-40.365(2)(B) because Cortner pled guilty to crimes reasonably related to the qualifications, functions or duties of an EMT-B.

#### B. False Bomb Report

Cortner's plea of guilty to the charge of making a false bomb report on December 5, 2013, is also reasonably related to the qualifications, functions or duties of an EMT-B in that EMT-Bs must respond to emergency situations to administer aid and transport critically ill and injured patients to medical facilities. EMT-Bs are not supposed to cause emergency situations and have emergency responders and law enforcement search businesses for bombs and evacuate employees of businesses for the safety of employees.

There is cause for discipline under § 190.165.2(2) and 19 CSR 30-40.365(2)(B) because Cortner pled guilty to a crime reasonably related to the qualifications, functions or duties of an EMT-B.

## II. Moral Turpitude

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”<sup>14</sup>

In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*,<sup>15</sup> a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:<sup>16</sup>

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
- (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved.<sup>17</sup>

### A. DWI Criminal Offenses

We determine that DWI-Alcohol, a Class B misdemeanor, is a Category 1 crime. The Department argues that Cortner’s pleas of guilty to two charges of driving while intoxicated is cause to discipline his EMT-B license because the criminal offenses involved moral turpitude. Cortner has had two DWI-alcohol arrests and entered pleas of guilty to these two cases on April

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<sup>14</sup> *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

<sup>15</sup> 213 S.W.3d 720 (Mo. App., W.D. 2007).

<sup>16</sup> *Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9<sup>th</sup> Cir. 1954)).

<sup>17</sup> *Brehe*, 213 S.W.3d at 725.

22, 2013. Thus, Cortner has had two DWI-alcohol criminal offenses that have occurred since the date he received his EMT-B license on February 16, 2011. Further, Cortner was charged with a DWI in 2009, but this charge was later amended to a charge of operating a motor vehicle in a careless and imprudent manner. These two DWI-alcohol pleas and the plea to operating a motor vehicle in a careless and imprudent manner have all occurred within the last five years. Furthermore, driving while intoxicated potentially places innocent lives at risk for serious injury or death.

There is cause to discipline Cortner under § 190.165.2(2) and 19 CSR 30-40.365(2)(B) because Cortner pled guilty to crimes that involved moral turpitude.

### B. False Bomb Report

We determine that making a false bomb report involves fraud and, therefore, is a Category 1 crime.

There is cause to discipline Cortner under § 190.165.2(2) and 19 CSR 30-40.365(2)(B) because Cortner pled guilty to making a false bomb report, a crime involving moral turpitude.

### III. Cortner's Arguments

Cortner downplays the importance of the criminal offenses. He attacks the evidence that he committed the crimes and the circumstances of his arrests. But the Department does not have to prove the underlying conduct before us.<sup>18</sup> The cause for discipline alleged is the guilty plea itself. Cortner does not contest that he pleaded guilty to the offenses.

Cortner questions why other licensees do not lose their licenses for similar actions. We determine only whether there is cause for discipline. The Department determines the level of discipline.

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<sup>18</sup> In fact there is evidence that Cortner did challenge the first DWI arrest. In *Cortner v. Director of Revenue*, 408 S.W.3d 789, 794 (Mo. App., E.D. 2013), the Court of Appeals found that an officer's failure to allow Cortner access to his cell phone was not improper because officers provided Cortner with a telephone book and a telephone and allowed him twenty minutes to call an attorney.

### **Summary**

Cortner is subject to discipline under § 190.165.2(2) and 19 CSR 30-40.365(2)(B).

SO ORDERED on February 9, 2015.

\s\ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner